

Super Target asks the Utah Labor Commission to review Administrative Law Judge Eblen's Order of Default and Dismissal of Super Target's contest of a citation for violation of the Utah Occupational Safety and Health Act ("the Act"; Utah Code Annotated Title 34A, Chapter 6 ).

The Commission exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12 and Utah Code Ann. §34A-6-304.

### **BACKGROUND AND ISSUE PRESENTED**

Super Target filed a notice of contest of a Utah Occupational Safety and Health ("UOSH") citation for violations of the Act. On March 9, 2004, Judge Eblen held a Prehearing Conference. Super Target failed to appear. On March 15, 2004, Judge Eblen issued an Order of Default and Dismissal. Super Target then filed a Motion for Review indicating that notice of the prehearing conference was not sent to the appropriate address. On April 26, 2004, Judge Eblen set aside her previous Order of Default and indicated that a new hearing date would be set.

A Prehearing Conference was scheduled for September 7, 2004. Super Target failed to appear. Judge Eblen issued an Order of Default and Dismissal. Super Target now alleges it did not receive notice of the prehearing conference and, once again, requests relief from its default.

### **DISCUSSION AND CONCLUSIONS OF LAW**

Under §63-46b-11 of the Utah Administrative Procedures Act and the Utah Rules of Civil Procedure, Super Target's request for relief from default must be decided by an Administrative Law Judge. The Commission remands this matter to the Adjudication Division for that purpose. If Super Target is dissatisfied with the ruling, it may then seek Commission or Appeals Board Review.

### **ORDER**

The Commission remands this matter to the Adjudication Division for further proceedings consistent with this decision. It is so ordered.

Dated this 31<sup>st</sup> day of May, 2005.

R. Lee Ellertson, Commissioner